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SEP 21 1960
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No. 353

In the Supreme Court of the United States

OCTOBER TERM, 1960

GEORGE F. MILLER, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS, THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the Court of Civil Appeals for the Third Supreme Judicial District of Texas (Pet. 18–34) is reported at 331 S.W. 2d 436. The findings of fact and conclusions of law of the District Court of Travis County, 126th Judicial District (Pet. 44–48), are not reported.

JURISDICTION

The Court of Civil Appeals entered its judgment on January 20, 1960 (Pet. 34–35), and denied petitioners' motion for rehearing on February 10, 1960. (Pet. 35.) The Supreme Court of Texas denied petitioners' application for a writ of error on April 27, 1960 (Pet. 36–37), and denied petitioners' motion for rehearing on May 25, 1960 (Pet. 37–38). The

petition for a writ for certiorari was filed on August 22, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Whether the federal tax lien created by § 6321 of the Internal Revenue Code of 1954 attaches to property of the taxpayer in the hands of a state-appointed receiver on the date of the assessment.

2. Whether taxes due the United States from an insolvent debtor are entitled to priority under R.S. § 3466 over wage claims secured by a statutory lien but not reduced to judgment.

STATUTES INVOLVED

Sections 6321 and 6322 of the Internal Revenue Code of 1954; R.S. § 3466 (31 U.S.C. 191); and Articles 5483 and 5486 of Texas Revised Civil Statutes, 1925 (16 Vernon's Tex. Civ. Stat. Ann. (1958), Art. 5483, 5486) are printed in the petition at pp. 14–17.

STATEMENT

On August 30 and September 2, 1958, petitioners filed, in accordance with Article 5486, Tex. Rev. Civ. Stat. (Pet. 15–16), notices of liens for unpaid wages in the amount of $1,130.29 against the assets of their employer, Capitol Coach Manufacturing Company (Pet. 45).

On September 19, 1958, the Company then being insolvent, a receivership proceeding was instituted in the District Court of Travis County, Texas. On September 30, 1958, a receiver was appointed and took possession of all the assets of the Company. The

assets were sold on November 4, 1958, and, after payment of expenses and court costs, there remains in the hands of the receiver for distribution to creditors approximately $1,000 (Pet. 46–48).

On January 12, 1959, petitioners intervened in the receivership proceeding and moved the court to foreclose their liens upon the assets of the Company and order satisfaction of the liens out of the proceeds of the sale of the assets (Pet. 47).

On January 22, 1959, the Commissioner of Internal Revenue assessed against the Company withholding and unemployment taxes totalling $1,482. Notice of a federal tax lien in that amount was filed with the County Clerk of Travis County on January 27, 1959 (Pet. 47). The United States thereafter intervened in the receivership proceedings and sought payment of its tax claim prior to payment of petitioners' wage claims.

The District Court held that petitioners' mechanics' liens were perfected prior to the creation of the federal tax lien and hence superior (Pet. 48) and directed distribution of the remaining $1000 to petitioners (Pet. 39–43). The Court of Civil Appeals reversed, holding that the mechanics' liens, not having been reduced to judgment, were inchoate under the test established by this Court and hence inferior to the subsequently-arising tax lien created by § 6321 of the Internal Revenue Code of 1954. Alternatively, it observed that the tax debt due the United States would be entitled to priority under R.S. § 3466 (31 U.S.C. 191) quite apart from the effect of the tax lien (Pet. 18–34). The Supreme Court of Texas,

finding no error, denied petitioners' application for a writ of error (Pet. 36).

ARGUMENT

1. It is established by the decisions of this Court that a statutory mechanics' lien, even though recorded pursuant to state procedure, remains inchoate until reduced to judgment and cannot prevail against a subsequently-arising federal tax lien under § 6321 of the Code. *United States* v. *Colotta*, 350 U.S. 808, reversing 224 Miss. 33; *United States* v. *White Bear Brewing Co.*, 350 U.S. 1010, reversing 227 F. 2d 359 (C.A. 7); *United States* v. *Vorreiter*, 355 U.S. 15, reversing 134 Colo. 543; and *United States* v. *Hulley*, 358 U.S. 66, reversing 102 So. 2d 500 (Fla.). Petitioners do not dispute that established rule but contend instead that no tax lien ever arose against the assets held by the receiver.

Petitioners' argument is that the lien attaches only to property of the taxpayer—i.e., the Company itself—and that at the date of the assessment title to the property had vested in the receiver and hence the "taxpayer" then had no property to which the lien could attach. The argument is without substance. Section 6321 of the Code provides that "If any person liable to pay any tax" fails to do so on demand, the amount of the tax shall, from the date of assessment (§ 6322), "be a lien * * * upon all property and rights to property * * * belonging to such person" (Pet. 16–17.) When title to the property vested in the receiver in trust for the benefit of the Company's creditors (including the United States), the receiver stepped into the shoes of the Company and became

the "person liable to pay [the] tax." Even viewing the assets as being property "belonging to" the receiver rather than the Company, therefore, they were nevertheless subject to the lien under the express terms of the statute.

2. Whether a lien for the taxes was created is immaterial in any event, for under R.S. § 3466 (31 U.S.C. 191; Pet. 17) debts due the United States[1] are, upon insolvency, entitled to priority whether or not secured by a lien. *United States* v. *New Britain*, 347 U.S. 81, 85. While there remains a question to what extent the statutory priority takes precedence over liens perfected before insolvency, it is established beyond dispute that the priority preempts prior inchoate liens. See *United States* v. *Waddill Co.*, 323 U.S. 353, 355; *Illinois* v. *Campbell*, 329 U.S. 362, 370; *United States* v. *Gilbert Associates*, 345 U.S. 361, 365. As the cases cited in point 1 establish, mechanics' liens of the sort involved here remain inchoate until reduced to judgment. Petitioners' liens were not reduced to judgment until after the receiver was appointed—the time at which the priority under R.S. § 3466 attached[2]—and accordingly could not take precedence over the tax claim.

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[1] Taxes are "debts" due the United States within the meaning of R.S. § 3466 (*Price* v. *United States*, 269 U.S. 492, 499-501; *Illinois* v. *United States*, 328 U.S. 8) and are entitled to priority whether or not presently due and payable at the date of insolvency (*Price* v. *United States*, *supra*; *United States* v. *State Bank of North Carolina*, 6 Pet. 29, 34-39).

[2] *Spokane County* v. *United States*, 279 U.S. 80, 93; *United States* v. *Oklahoma*, 261 U.S. 253, 260; *Massachusetts* v. *United States*, 333 U.S. 611, 617 n. 8, 625.

CONCLUSION

The decision below is clearly correct and there is no conflict of decisions. The petition for certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 1960.

U. S. GOVERNMENT PRINTING OFFICE 1960